

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN A. HIRSCH and RONALD W.
ZOLLA, Individually and as officers,
directors, and shareholders of ZHL, Inc., and
ZHL, Inc.,

Plaintiffs,

v.

MICHAEL LAMENSDORF and KATHY
LAMENSDORF, Individually and as
shareholders of ZHL, Inc.,

Defendants.

CIVIL ACTION NO. 0510902-DPW

DEFENDANTS' STATEMENT REGARDING SCHEDULING

Defendants submit this Statement Regarding Scheduling pursuant to the Court's Notice of Scheduling Conference, Order for Joint Statement and Certifications, and Order for Electronic Filing dated May 10, 2005.

1. **Introductory Statement**

Case No. 05-10902-DPW was originally filed with the Superior Court for the Commonwealth of Massachusetts in December, 2004. Plaintiffs did not serve the Defendants with process until April, 2005. On or about May 2, 2005, Defendants removed Case No. 05-10902-DPW to the United States District Court for the District of Massachusetts. No discovery has taken place in Case No. 05-10902-DPW.

The parties conferred in an effort to prepare a Joint Statement containing a proposed pretrial schedule but were unable to reach an agreement. The nature of the differences between the parties stems from Plaintiffs' desire to sell and dispose of ZHL,

Inc.'s assets and their desire to phase discovery and limit Defendants' investigation of this matter despite the fact that they are minority shareholders in ZHL, Inc.

2. Defendants' Proposed Discovery Plan

Defendants propose the discovery and scheduling plan identified below. Since no discovery has been taken in this case, Defendants propose that they be permitted to take any relevant discovery within the time stated in the scheduling plan identified below in accordance with Local Rules of the United States District Court for the District of Massachusetts. Plaintiffs seek to sell the sole remaining assets of ZHL, Inc. and use the proceeds to pay off loans to the Plaintiffs, John Hirsch and Ronald Zolla, despite the fact that they are involved in litigation with ZHL, Inc. and are seeking substantial damages from ZHL, Inc. on behalf of a separate entity; Ophnet, Inc. The relevant discovery Defendants plan to take includes, but is not limited to, depositions of the Plaintiffs, fact witnesses and expert witnesses. In addition, Defendants anticipate serving Plaintiffs with Interrogatories, Requests for Production and Requests for Admission. Defendants do not anticipate exceeding the limitations set forth in the Local Rules.

3. Phased Discovery

Local Rule 16.1 provides for phased discovery to develop information in phase one needed for a realistic assessment of the case and, if the case does not terminate, to develop information in phase two directed at preparing a matter for trial. Defendants do not believe that phased discovery is necessary in this matter.

4. Discovery and Scheduling Plan

Defendants submit the following discovery and scheduling plan for the Court's consideration:

- (a) Exchange of initial disclosures: August 1, 2005
- (b) Designation of expert(s) and disclosure by plaintiffs: October 30, 2005
- (c) Designation of expert(s) and disclosure by defendant: November 16, 2005
- (d) Completion of fact discovery: November 30, 2005
- (e) Completion of expert depositions: January 16, 2006
- (f) Deadline for filing motions for summary judgment: March 13, 2006
- (g) Deadline for responding to motions for summary judgment: April 14, 2006
- (h) Final pre-trial conference: June 14, 2006
- (i) Trial: July 3, 2006

5. Certification of Counsel and Defendants

Certification by the Defendants and counsel pursuant to Local Rule 16.1(D)(3) was filed separately.

Respectfully submitted,

MICHAEL LAMENSDORF and
KATHY LAMENSDORF

By their attorneys,

/s/ Ian J. McLoughlin

Brandon F. White, BBO# 525020
Ian J. McLoughlin, BBO# 647203
Matthew E. Miller, BBO# 655544
FOLEY HOAG, LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000

/s Joseph Tsombanidis

ABEL, BAND, RUSSELL,
COLLIER, PITCHFORD &
GORDON, CHARTERED
Michael S. Taaffe
Joseph A. Tsombanidis
240 South Pineapple Avenue
Sarasota, Florida 34230-6948
(941) 366-6660
(941) 366-3999 (fax)

Dated: July 8, 2005